



471622

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

IN THE MATTER OF:

MASTER METALS, INC.  
SUPERFUND SITE,  
CLEVELAND, OHIO

UNDER THE AUTHORITY OF THE  
COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND  
LIABILITY ACT OF 1980, 42 U.S.C.  
§ 9601, et seq., as amended.

Docket No. V-W- '01 -C-631

AGREEMENT AND  
COVENANT NOT TO SUE  
THE NORTHERN OHIO  
LUMBER & TIMBER COMPANY  
AND BREDT-ZANICK, LLC

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## I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("U.S. EPA") and Bredt-Zanick LLC ("Bredt-Zanick") and The Northern Ohio Lumber & Timber Company ("NOLTCO").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

The Master Metals, Inc. Superfund Site ("Site") consists of two separate areas in and around an industrial portion of Cleveland, Cuyahoga County, Ohio, known as the "Flats." The first location is a former lead smelting facility, covering approximately 4.3 acres, at 2850 West Third Street. The Property subject to this Agreement is only this first location. The second location comprising the Site consists of a collection of residential properties located at 1157, 1159 and 1167 Holmden Avenue.

Bredt-Zanick is a limited liability corporation contemplating acquiring the Property and leasing it to NOLTCO. NOLTCO is a lumber corporation, selling lumber and timber to commercial and retail clients. Bredt-Zanick and/or NOLTCO is(are) contemplating redeveloping the Property for NOLTCO's operations, including lumber and timber storage and cutting. The address of Bredt-Zanick is 7300 Brecksville Road, Independence, OH 44131. The address of NOLTCO is 1895 Carter Road, Cleveland, Ohio, 44113.

U.S. EPA, Bredt-Zanick, and NOLTCO (collectively, the "Parties") agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to address certain environmental conditions at the Property and to settle and resolve, subject to reservations and limitations contained in Sections IX, X, XI, and XII, the potential liability of Bredt-Zanick and NOLTCO (the "Settling Respondents") for the Existing Contamination at the Property which would otherwise result from Settling Respondents becoming the owners and/or operators of the Property.

The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondents.

The resolution of this potential liability, in exchange for provision by the Settling Respondents to U.S. EPA of a substantial benefit, is in the public interest.

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "Completion of the Non-Time Critical Removal Action" shall mean the date that U.S. EPA either (i) provides written notice to the PRPs that all work required to implement the Non-Time Critical Removal Action has been completed; or (ii) U.S. EPA provides Settling Respondents with notice that U.S. EPA has completed all work required to implement the Non-Time Critical Removal Action.

2. "Existing Contamination" shall mean:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of this Agreement;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and
- c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

3. "Non-Time Critical Removal Action" shall mean the removal action to be taken in accordance with the September 30, 1999 Action Memorandum of U.S. EPA at the Site, as amended by the September 22, 2000 Action Memorandum that changed the project scope.

4. "Parties" shall mean the United States on behalf of U.S. EPA and the Settling

Respondents:

5. "Property" shall mean that portion of the Site described in Exhibit 1 of this Agreement. The Property is a former lead smelting facility, covering approximately 4.3 acres, at 2850 West Third Street.

6. "PRPs" shall mean the Potentially Responsible Parties at the Site, including those who performed a time-critical removal action at the Site from 1997 to 1999, and those who are liable for performing the Non-Time Critical Removal Action.

7. "Settling Respondents" shall mean Bredt-Zanick LLC and The Northern Ohio Lumber & Timber Company.

8. "Site" shall mean the Master Metals, Inc., Superfund Site, encompassing two separate locations. The first location is approximately 4.3 acres at and around 2850 W. Third Street ("West Third Street portion of the Site"). This location includes an office building and a

portion of a roundhouse. The second location is less than one acre at and around 1157, 1159 and 1167 Holmden Avenue ("Holmden Avenue portion of the Site"), all in Cleveland, Cuyahoga County, Ohio, and depicted generally on the map attached as Exhibit 2. The Site shall include the Property and all areas on which hazardous substances and/or pollutants or contaminants, have come to be located.

9. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

10. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

11. "Work" shall mean the work to be performed by the Settling Respondents under Section V of this Agreement.

### III. STATEMENT OF FACTS

12. In 1932, National Lead Industries, Inc. ("National Lead") built a secondary lead smelter on the West Third Street portion of the Site, constructing the smelter on slag fill. National Lead owned and operated the lead smelter, producing lead alloys from lead-bearing dross and lead scrap materials. National Lead also engaged in battery cracking as part of its operations.

13. Master Metals, Inc. ("Master Metals") purchased the National Lead facility in 1979. Master Metals thereafter continued to run the facility as a secondary lead smelter, receiving lead-bearing materials from off-site sources. The lead-bearing feed material received by Master Metals was classified and regulated under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as "D008" hazardous waste. In its operations, Master Metals used rotary and pot furnaces to convert these lead-bearing materials into lead ingots.

14. By-products from the smelting operation included furnace flux, slag, dross, baghouse fines and furnace sludge. Excluding slag, Master Metals recycled most of the material back into the furnaces. Slag was tested and disposed of off-Site. Cooling water was diverted to the City of Cleveland sewer system. Finished lead ingots were stored in a roundhouse at the north end of the property prior to shipment off-Site.

15. Master Metals had a long history of non-compliance with various state and federal environmental, health and safety laws, as well as a history of poor operating and waste storage practices. Releases of hazardous materials to the environment, including to the West Third Street portion of the Site, have been documented. Master Metals' operations released lead into groundwater, soils, Site buildings and into the air.

16. U.S. EPA contractors found in 1992 that soil samples collected from the Holmden Avenue portion of the Site contained lead concentrations ranging from 148 parts per million ("ppm") to 1,850 ppm. This contamination appears to be from construction debris that Master Metals disposed of as fill material there in 1987.

17. The Ohio Environmental Protection Agency installed three ambient air monitors near the West Third Street portion of the Site in January of 1992. During the first two quarters of 1992, air samples collected from the station immediately downwind of Master Metals revealed exceedances of the Clean Air Act's ("CAA"), 42 U.S.C. §§ 7401 et seq., National Ambient Air Quality Standards ("NAAQS") for lead. In April and May 1992, four more NAAQS violations were recorded. In July 1992, Master Metals installed a sprinkler system in an attempt to prevent airborne lead from migrating off the West Third Street portion of the Site.



18. On August 5, 1993, the Director of the Ohio EPA ordered Master Metals to cease operating the lead smelter until it could demonstrate compliance with the Clean Air Act. Despite the shutdown of Master Metals' furnaces on this date, an EPA air monitoring station, located downwind of the West Third Street portion of the Site, routinely detected elevated lead concentrations as much as 500 times greater than upwind concentrations and 33 times the quarterly average established for the NAAQS for lead. An unknown portion of these NAAQS violations were due to lead-laden dust migrating from the West Third Street portion of the Site via prevailing winds.

19. On March 28, 1995, the Master Metals Site was referred to U.S. EPA's Superfund program for cleanup. In an August 22, 1995 letter, Master Metals withdrew all permits still in effect regarding its operation, effectively terminating its ability to treat, store or dispose of hazardous waste at the lead-smelting facility.

20. U.S. EPA entered into two agreements with PRPs at the Site. Under these agreements, the PRPs conducted a time-critical removal action at the Site from 1997 to 1999. During this removal action, the PRPs' contractor:

- (i) removed waste from the Site;
- (ii) demolished or decontaminated Site buildings; and
- (iii) consolidated and treated contaminated Site soils.

In the course of this action, the PRPs' contractor removed waste from and decontaminated the Property.

21. The PRPs at the Site conducted an engineering evaluation and cost analysis (EE/CA) in 1999 that evaluated long-term remedies for the Site. The EE/CA's recommendation

was to consolidate and treat remaining contaminated soils at the West Third Street portion of the Site and then install and maintain a soil cover cap over those contaminated soils. The EE/CA's recommendation requires installing and maintaining this cap on the Property. On September 30, 1999, U.S. EPA issued an Action Memorandum that approved the EE/CA's recommendation. On September 22, 2000, U.S. EPA issued an amended Action Memorandum that changed the project scope from a soil cover cap to an asphalt cap in order to accommodate the planned redevelopment by the Settling Respondents. EPA is currently preparing to negotiate with the PRPs regarding conducting the Non-Time Critical Removal Action.

22. The Settling Respondents represent, and for the purposes of this Agreement

U.S. EPA relies on those representations, that the Settling Respondents will incur substantial costs in performing and/or paying for the Work under this Agreement.

23. The Settling Respondents represent, and for the purposes of this Agreement

U.S. EPA relies on those representations, that Settling Respondents had no involvement with the Property and/or the Site.

#### IV. PAYMENT

24. In consideration of and in exchange for the United States' Covenant Not to Sue in Section X herein, Settling Respondents agree to pay to U.S. EPA the sum of \$2,000 within 30 days of the effective date of this Agreement. The Settling Respondents must make all payments required by this Agreement in the form of a certified check or checks made payable to "U.S. EPA Hazardous Substance Superfund," referencing:

U.S. EPA Region 5;  
U.S. EPA Docket number \_\_\_\_ (the docket number of this document);  
Site/Spill ID# 05WB;  
DOJ Case Number 90-11-3-07121/1; and  
Name and Address of Settling Respondents.

The Settling Respondents must send all payments to: U.S. EPA Region 5, Attn: Superfund Accounting, PO Box 70753, Chicago, IL, 60673. The Settling Respondents must send notice and copies of all payments to those persons listed in Section XVII (Notices and Submissions) and to: Cyprian Ejiasa, Comptroller, U.S. EPA Region 5, 77 W. Jackson Blvd. (MF-10J), Chicago, IL, 60604-3590.

25. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

#### V. WORK TO BE PERFORMED

26. In consideration of and in exchange for the United States' Covenant Not to Sue in Section X herein, Settling Respondents agree to undertake the Work set forth in this Section V.

27. Settling Respondents agree to fully fund and perform, for a period of thirty years, all operation and maintenance requirements necessary to ensure the long-term integrity of the Non-Time Critical Removal Action that will be performed at the Site. Such operation and maintenance requirements shall include but not be limited to: (i) preventative maintenance, such as regularly inspecting the integrity of the Site fence, preventing the cracking and splitting of the asphalt cap, and regularly inspecting and controlling erosion in Site areas that are not capped by asphalt; and (ii) routine maintenance, such as repairing the Site fence, sealing and filling cracks and potholes in the asphalt cap, and maintaining the vegetation or other cover over areas that are

not capped by asphalt.

28. To the extent that the PRPs enter into an agreement with U.S. EPA to prepare, submit, and secure approval for, an Operation and Maintenance ("O&M") Plan that covers both implementation and long-term maintenance of the Non-Time Critical Removal Action, Settling Respondents agree to fully fund and implement the O&M Plan that U.S. EPA ultimately approves. To the extent that the PRPs and U.S. EPA do not enter into such an agreement, Settling Respondents agree to prepare, submit, and secure approval for, such an O&M Plan. If Settling Respondents are responsible for the preparation, submission, and securing of approval for, the O&M Plan, Settling Respondents shall submit an initial Draft O&M Plan no later than fifteen (15) days after either the PRPs or U.S. EPA completes the construction at the Site pursuant to the schedule that implements the Non-Time Critical Removal Action. The initial Draft O&M Plan shall be composed of the elements set forth in Exhibit 3 to this Agreement.

29. Settling Respondents agree, for a period of thirty years, to routinely monitor the Property on a regular schedule for security purposes and to provide for the security of the Property. All Property security that is in place at the time of the Completion of the Non-Time Critical Removal Action shall be maintained. Settling Respondents shall notify U.S. EPA and Ohio EPA of any security concerns.

#### VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

30. Commencing upon the date that it acquires title to the Property, Settling Respondents agree to provide to U.S. EPA, its authorized officers, employees, representatives, and all other persons performing response actions under U.S. EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is

required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondents, for the purposes of performing and overseeing response actions at the Site under federal law. U.S. EPA agrees to provide reasonable notice to the Settling Respondents of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, U.S. EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

31. With respect to any Property owned or controlled by the Settling Respondents that is located within the Site, within 15 days after the later of (i) the effective date of this Agreement; or (ii) the date of acquisition of any Property, the Settling Respondents shall record a certified copy of this Agreement with the Recorder's Office, Cuyahoga County, State of Ohio. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. Within 30 days of the effective date of this Agreement, Settling Respondents shall notify the persons listed in Section XVII of this Agreement that it has complied with the provisions of this Paragraph.

32. With respect to any Property owned or controlled by the Settling Respondents that is located within the Site, within 15 days after the later of (i) the effective date of this Agreement; or (ii) the date of acquisition of any Property, the Settling Respondent shall submit to U.S. EPA for review and approval a notice to be filed with the Recorder's Office, Cuyahoga County, State of Ohio, which shall provide notice to all successors-in-title that:

- (i) the Property is part of the Site;
- (ii) U.S. EPA selected a long-term remedy for the Site on September 30, 1999, as amended on September 22, 2000; and
- (iii) either U.S. EPA or the PRPs will implement the remedy.

The Settling Respondents shall record the notice within 10 days of U.S. EPA's approval of the notice. The Settling Respondents shall provide U.S. EPA with a certified copy of the recorded notice within 10 days of recording such notice. In the event that the Settling Respondents receive notice that an Administrative Order has been issued requiring implementation of the remedy, the Settling Respondents shall amend their notice to identify that such Administrative Order has been issued, the name of the respondents to the Administrative Order, the docket number of the

Administrative Order and the date of the issuance of the Administrative Order. Settling

Respondents shall submit any amended notice to U.S. EPA for review and approval within 15 days of Settling Respondents' receipt of notice that an Administrative Order has been issued requiring implementation of the remedy. The Settling Respondents shall record the notice within 10 days of U.S. EPA's approval of the amended notice. The Settling Respondent shall provide U.S. EPA with a certified copy of the recorded amended notice within 10 days of recording such amended notice.

33. The Settling Respondents shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation as the Settling Respondents are required to provide. The Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or

transfers of the Property or an interest in the Property are consistent with this Section, Section V (Work to be Performed) and Section XIII (Parties Bound/Transfer of Covenant), of the Agreement.

**VII. SETTLING RESPONDENTS' ACCESS TO AND USE OF PROPERTY  
PRIOR TO COMPLETION OF NON-TIME CRITICAL REMOVAL ACTION**

34. The Settling Respondents recognize that after they acquire ownership of the Property but before the Completion of the Non-Time Critical Removal Action, the Settling Respondents' access to and use of the Property may be impaired. If the Settling Respondents seek access to and/or use of the Property prior to U.S. EPA's approval of a Health and Safety Plan that covers the implementation of the Non-Time Critical Removal Action, the Settling Respondents shall submit to the Superfund Division of Region 5 of U.S. EPA a written or oral request for access to the Property, stating the actions that the Settling Respondents propose to take on the Property. U.S. EPA shall not unreasonably withhold its approval of Settling Respondents' request for access. If the Settling Respondents seek access to and/or use of the Property after the approval of a Health and Safety Plan but before the Completion of the Non-Time Critical Removal Action, Settling Respondents and all employees, agents, and/or contractors retained by or working on behalf of the Settling Respondents shall comply with the terms and provisions of the approved Health and Safety Plan. Settling Respondents shall provide a copy of the approved Health and Safety Plan to all employees, agents, and/or contractors who seek access to the Property prior to providing such access to any individual.

## VIII. DUE CARE/COOPERATION

35. The Settling Respondents shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Respondents agree that, prior to the Completion of the Non-Time Critical Removal Action, activities relating to or arising out of the implementation and completion of the Non-Time Critical Removal Action shall take precedence over activities relating to the redevelopment of the Property for Settling Respondents' operations, in the event of any conflict between those activities. The Settling Respondents recognize that the implementation of response actions at the Site may interfere with the Settling Respondents' use and redevelopment of the Property until Completion of the Non-Time Critical Removal Action. The Settling Respondents agree to cooperate fully with U.S. EPA and/or the PRPs in the implementation of response actions at the Site, and further agree not to take any actions that interfere with such response actions. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify U.S. EPA of such release or threatened release.

## IX. CERTIFICATION

36. By entering into this agreement, the Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to U.S. EPA all information



known to Settling Respondents and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to their qualification for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondents is not materially accurate and complete, this Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

#### X. UNITED STATES' COVENANT NOT TO SUE

37. Subject to the Reservation of Rights in Section XI of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, and conditioned upon the Settling Respondents' satisfactory performance of the Work and all other obligations in this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to the Existing Contamination.

#### XI. RESERVATION OF RIGHTS

38. The covenant not to sue set forth in Section X above does not pertain to any matters other than those expressly specified in Section X (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Settling Respondents to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Work to Be Performed), Section VI (Access/Notice to Successors in Interest), Section VII (Settling Respondents' Access to and Use of Property Prior to Completion of Non-Time Critical Removal Action), Section VII (Due Care/Cooperation) and Section XVI (Payment of Costs);
- b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondents, their successors, assignees, lessees or sublessees;
- c. any liability resulting from exacerbation by Settling Respondents, their successors, assignees, lessees or sublessees, of Existing Contamination;
- d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;
- e. criminal liability;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than U.S. EPA; and
- g. liability for violations of local, State or federal law or regulations.

39. With respect to any claim or cause of action asserted by the United States, the Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

40. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

41. Nothing in this Agreement is intended to limit the right of U.S. EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondents to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by U.S. EPA in exercising its authority under federal law. Settling Respondents acknowledge that they are purchasing Property where response actions are required.

## XII. SETTLING RESPONDENTS' COVENANT NOT TO SUE

42. In consideration of the United States' Covenant Not To Sue in Section X of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives

with respect to the Site or this Agreement, including but not limited to:

- a. any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law;
- b. any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site;
- c. any claims arising out of response activities at the Site, including claims based on U.S. EPA's selection of response actions, oversight of such activities or approval of plans for such activities;
- d. any claim under the United States Constitution, Ohio Constitution, Tucker Act, 28 U.S.C. § 1491, common law or any other state or local law arising out of or relating to past or future access to, imposition of covenants, conditions, and restrictions on, or other restrictions on the use and/or enjoyment of, the Property, the Site, the property adjacent to the Site, and/or any property owned or controlled by the Settling Respondents affected by the covenants, conditions, and restrictions on access rights herein.

43. The Settling Respondents reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

### XIII. PARTIES BOUND/TRANSFER OF COVENANT

44. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon the Settling Respondents, their officers, directors, and employees.

The United States' Covenant Not to Sue in Section X and Contribution Protection in Section XX shall apply to Settling Respondents' officers, directors, or employees to the extent that the alleged liability of the officer, director, or employee, is based on his/her status and in his/her capacity as an officer, director, or employee of Settling Respondents, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

45. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person with the prior written consent of U.S. EPA in its sole discretion.

46. The Settling Respondents agree to pay the reasonable costs incurred by U.S. EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

47. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as U.S. EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the Work in Section V and the certification requirement in Section IX of this Agreement in order for the Covenant Not to Sue in Section X to be available to that party. The Covenant Not To Sue in Section X shall not be effective with respect to any assignees or transferees who fail to provide such written consent to U.S. EPA.

#### XIV. DISCLAIMER

48. This Agreement in no way constitutes a finding by U.S. EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by U.S. EPA that the Property or the Site is fit for any particular purpose.

#### XV. DOCUMENT RETENTION

49. Following the effective date of this Agreement, the Settling Respondents agree to retain and make available to U.S. EPA all business and operating records, contracts, Site studies and investigations, and documents relating to Work at the Property, until completion of the Work

to the satisfaction of U.S. EPA, unless otherwise agreed to in writing by the Parties. At the end of the completion of the Work to the satisfaction of U.S. EPA, the Settling Respondents shall notify U.S. EPA of the location of such documents and shall provide U.S. EPA with an opportunity to copy any documents at the expense of U.S. EPA.

#### XVI. PAYMENT OF COSTS

50. If the Settling Respondents fail to comply with the terms of this Agreement, including but not limited to the provisions of Section IV (Payment) or Section V (Work to be Performed) of this Agreement, they shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

#### XVII. NOTICES AND SUBMISSIONS

51. All notices and submissions required by this Agreement shall be sent to:

For the United States:

a. Regional Counsel  
Attn: Master Metals, Inc. Superfund Site  
Cleveland, Ohio  
U.S. Environmental Protection Agency Region 5  
77 W. Jackson Blvd. (C-14J)  
Chicago IL 60604-3590

b. Director, Superfund Division  
Attn: Master Metals, Inc. Superfund Site  
Cleveland, Ohio  
U.S. Environmental Protection Agency Region 5  
77 W. Jackson Blvd. (SR-6J)  
Chicago IL 60604-3590

- c. Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
Attn: Master Metals, Inc. Superfund Site  
Cleveland, Ohio  
U.S. Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
D.J. Number 90-11-3-07121/1

For Settling Respondent:

- a. Bredt-Zanick LLC  
7300 Brecksville Road  
Independence, OH 44131
- b. The Northern Ohio Lumber & Timber Company  
1895 Carter Road  
Cleveland, OH 44113
- c. David S. Hoffmann  
McMahon, DeGulis, Hoffmann & Blumenthal L.L.P.  
The Caxton Building – Suite 650  
812 Huron Road  
Cleveland, OH 44120

XVIII. EFFECTIVE DATE

52. The effective date of this Agreement shall be the date upon which U.S. EPA issues written notice to the Settling Respondents that U.S. EPA has fully executed the Agreement after review of and response to any public comments received.

XIX. TERMINATION OF ACCESS/NOTICE

53. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to

terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

## XX. CONTRIBUTION PROTECTION

54. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

55. The Settling Respondents agree that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

56. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

## XXI. EXHIBITS

57. Exhibit 1 is a description of the Property which is the subject of this Agreement.

58. Exhibit 2 is a map depicting the Site.

59. Exhibit 3 is a description of the elements of an Operation and Maintenance Plan that Settling Respondents must submit if they are required to do so pursuant to the provisions of Paragraph 28.



## XXII. PUBLIC COMMENT

60. This Agreement shall be subject to a thirty-day public comment period, after which U.S. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

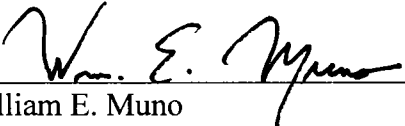
**In the matter of Master Metals Inc. Superfund Site, Cleveland, Oh;  
Agreement and Covenant Not to Sue Northern Ohio Lumber & Timber Co. and  
Bredt-Zanick, LLC**

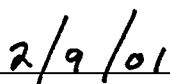
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IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

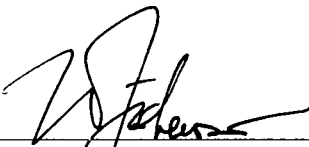
  
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William E. Muno  
Director, Superfund Division  
U.S. EPA Region 5

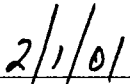
  
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IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

  
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Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division

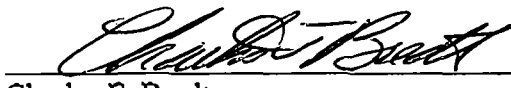
  
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**In the matter of Master Metals Inc. Superfund Site, Cleveland, Oh;  
Agreement and Covenant Not to Sue Northern Ohio Lumber & Timber Co. and  
Bredt-Zanick, LLC**

IT IS SO AGREED:

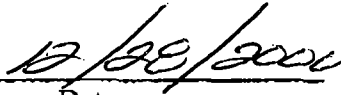
THE NORTHERN OHIO LUMBER AND TIMBER COMPANY

BY:



Charles F. Bredt  
Vice President

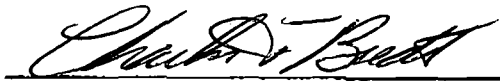
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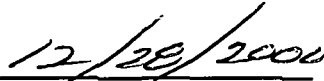
BREDT-ZANICK LLC

BY:



Charles F. Bredt  
Manager

Date



### Description of the property

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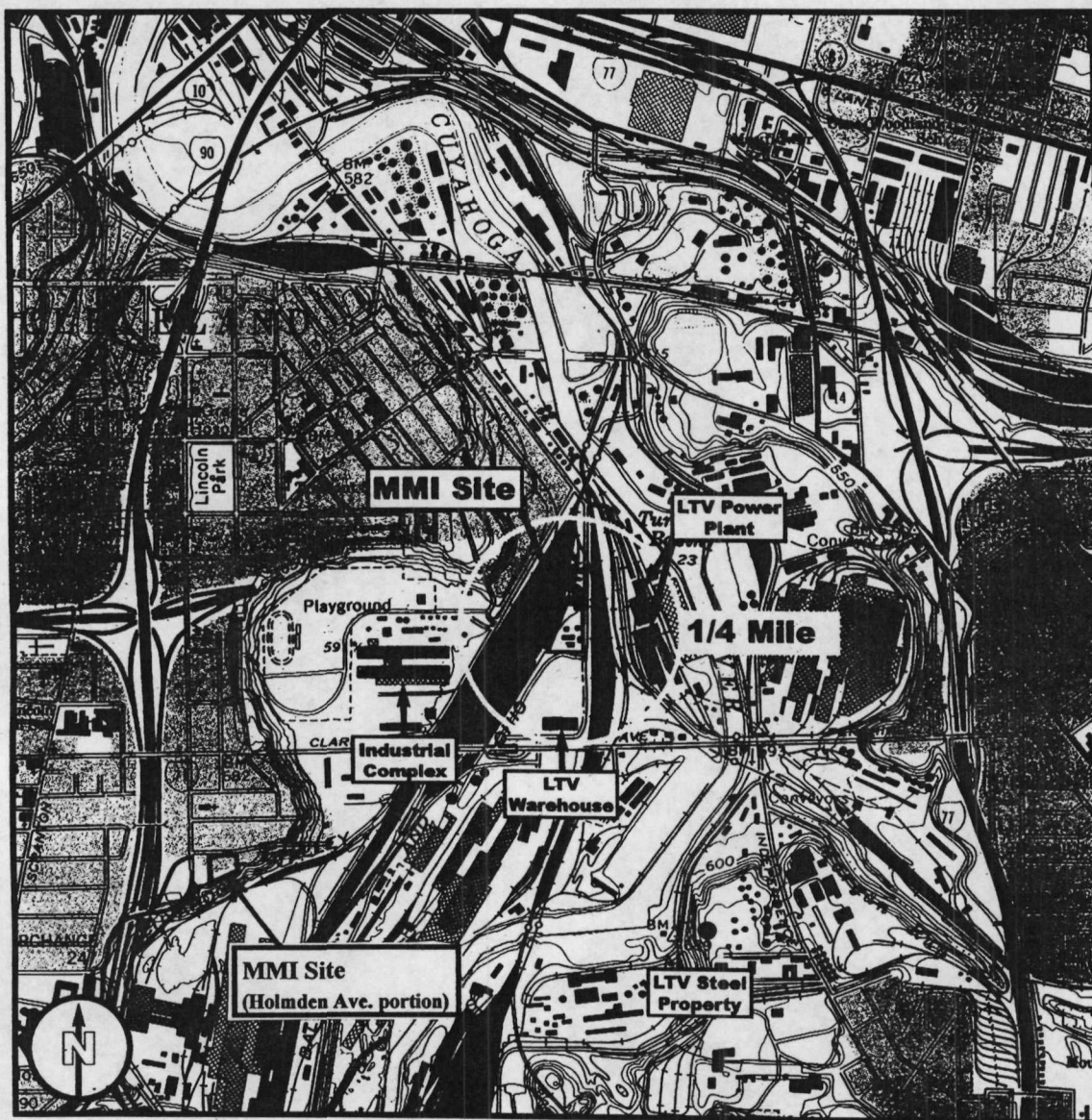
## Exhibit 2

Map depicting the site

### SITE LOCATION MAP

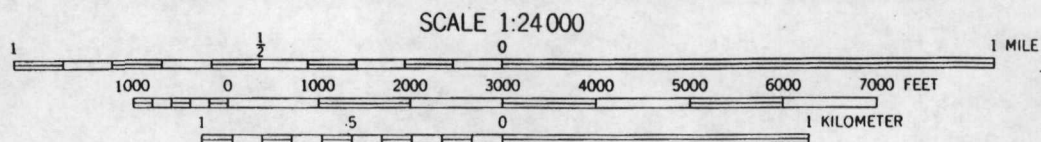
**ENTACT**  
Leading the Nation in Customer Care

CLEVELAND SOUTH QU'ADRANGLE OHIO-CUYAHOGA CO.  
7.5 MINUTE SERIES (TOPOGRAPHIC)



MN  
GN  
6 1/2"  
116 MILS  
0°27'  
8 MILS

UTM GRID AND 1984 MAGNETIC NORTH  
DECLINATION AT CENTER OF SHEET



SCALE 1:24 000  
CONTOUR INTERVAL 10 FEET  
NATIONAL GEODETIC VERTICAL DATUM OF 1929  
DEPTH CURVES AND SOUNDINGS IN FEET—DATUM IS LOW WATER 570.5 FEET

Figure 2.1

### **EXHIBIT 3**

To the extent that, pursuant to Paragraph 28 of this Agreement, Settling Respondents are responsible for the preparation, submission, and securing of approval for, an Operation and Maintenance ("O&M") Plan that covers both implementation and long-term maintenance of the Non-Time Critical Removal Action, Settling Respondents shall submit an initial Draft O&M Plan composed of the following elements:

- a. Description of normal operation and maintenance:
  - i. Description of tasks for operation;
  - ii. Description of tasks for maintenance;
  - iii. Description of prescribed treatment or operation conditions;
  - iv. Schedule showing frequency of each O&M task.
- b. Description of potential operation problems:
  - i. Description and analysis of potential operation problems;
  - ii. Sources of information regarding problems;
  - iii. Common and/or anticipated remedies.
- c. Description of routine monitoring and laboratory testing:
  - i. Description of monitoring tasks;
  - ii. Description of required data collection, laboratory tests and their interpretation;
  - iii. Required quality assurance and quality control;
  - iv. Schedule of monitoring frequency and procedures for a petition to U.S. EPA to reduce the frequency of or discontinue monitoring;
  - v. Description of verification sampling procedures if Cleanup or Performance Standards are exceeded in routine monitoring.
- d. Description of alternate O&M:
  - i. Should systems fail, alternate procedures to prevent release or threatened releases of hazardous substances, pollutants or contaminants which may endanger public health and the environment or exceed performance standards;
  - ii. Analysis of vulnerability and additional resource requirements should a failure occur.
- e. Corrective Action:
  - i. Description of corrective action to be implemented in the event that cleanup or performance standards are exceeded;
  - ii. Schedule for implementing these corrective actions.
- f. Safety Plan:
  - i. Description of precautions, or necessary equipment, etc., for Site personnel;
  - ii. Safety tasks required in the event of systems failure.

- g. Description of equipment:
  - i. Equipment identification;
  - ii. Installation of monitoring components;
  - iii. Maintenance of Site equipment;
  - iv. Replacement schedule for equipment and installed components; and
- h. Records and reporting mechanisms required:
  - i. Daily operating logs;
  - ii. Laboratory records;
  - iii. Records for operating costs;
  - iv. Mechanism for reporting emergencies;
  - v. Personnel and maintenance records;
  - vi. Monthly/annual reports to U.S. EPA and Ohio EPA.